

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1, 3-9, and 11-16, and 18-35 will be pending in the present application. Claims 2, 10, and 17 have been cancelled. Claims 3, 4, 11, 12, 18-21, 24, 25, 33, and 34 have been withdrawn from consideration.

The specification has been amended to noted that the patent application listed on pages 9 and 10 of the specification have now issued as U.S. patents. Applicant submits that the incorporation by references of each of these items is now correct as a result of the use of the issued U.S. patent no. in place of the application no.

Claims 1, 2, 5-10, 13-17, 22, 23, 26-32, and 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,398,739 to Sullivan et al. ("the '739 patent") in view of U.S. Patent No. 5,313,945 to Friedlander ("the '945 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claim 1 recites an apparatus for delivering a flow of gas to the airway of a patient that includes, among other things, a means for minimizing acoustic noise of the gas flow generating means by generating a cancellation frequency that at least partially cancels acoustic waves generated by the gas flow generating means. Claim 1 further recites that the means for minimizing acoustic noise includes a speaker adapted to create cancellation acoustic waves as the cancellation frequency, and that the speaker *is disposed so as to direct the cancellation acoustic waves into over an area in which the apparatus is located*. Applicant respectfully submits that the cited references do not teach or suggest an apparatus for delivering a flow of gas to the airway having these features.

As correctly noted by the Examiner, the '739 patent does not teach or suggest any means for minimizing the noise created by the CPAP system disclosed therein. For this, the Examiner cites the '945 patent, which teaches a headphone system for use in an MRI system. In the system taught by the '945 patent, a cancellation signal is generated and is provided to the

user's ears via hollow tubes. This system may work well for the person receiving the MRI and having the earphone system but it has disadvantages.

First, the system taught by the '945 patent requires the user to wear earphones. This is bulky and cumbersome to the user, especially if the user is attempting to sleep. Second, the system taught by the '945 patent does not provide noise level reductions to other people in the same general area. Instead, the noise cancellation benefits are only available to the person wearing the earphones.

The present invention, however, goes beyond the limited capability of the system taught by the '945 patent and seeks to provide noise attenuation for the ambient environment in which the pressure support system is located and without bulky earphones. Thus, applicant respectfully submits that even if the teachings of the '945 patent are combined with that of the '739 patent, which applicant does not admit is taught or suggested, the resulting combination falls short of the invention as now defined in amended independent claim 1.

Independent claims 9, 16, 22, and 31 as amended above, are generally similar to independent claim 1. Thus, the reasons why independent claim 1 is distinguishable over the cited reference are equally applicable to claims 9, 16, 22, and 31. Claims 22 and 31, being method claims, omit the recitation of a speaker but does recite the "broadcasting" function of the speaker.

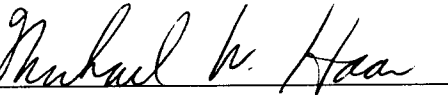
For the reasons presented above, applicant respectfully submits that independent claims 1, 9, 16, 22, and 31 are not rendered obvious by the cited references. In addition, claims 2, 5-8, 13-15, 23, 26-30, 32 and 35 are also not rendered obvious due to their dependency from independent claims 1, 9, 16, 22, or 31. Claims 2, 10, and 17 have been cancelled rendering their rejection moot. Accordingly, applicant respectfully requests that the above rejection of claims 1, 2, 5-10, 13-17, 22, 23, 26-32, and 35 be withdrawn.

This response is being filed within the three-month statutory response period which expires on November 30, 2007. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

ALEXANDER et al. -- Appln. No.: 10/705,534

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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Note: The Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.